IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

REGULAR SECOND APPEAL NO.676 of 1994

DATE OF DECISION: 20th September, 2006

Des Raj

.....Appellant

versus

Nachhattar Singh and others

.....Respondents

CORAM:- HON'BLE MRS. JUSTICE NIRMAL YADAV

Present: Mr. Jaswant Jain, Advocate for the appellant

Mr. K.S. Grewal, Advocate for the respondents

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JUDGMENT:

The appellant/plaintiff has filed this second appeal against the judgment & decree dated 8.12.1993 passed by District Judge, Sangrur, vide which the judgment & decree dated 22.5.1990 passed by Sub Judge Ist Class, Malerkotla, decreeing his suit for possession of land measuring 11 bighas - 6 biswas situated in Village Hussainpura by specific performance of agreement to sell dated 10.12.1986 has been reversed.

The facts, in brief, are that Nachhattar Singh, respondent No.1/defendant No.2 and Bachan Singh, defendant No.1/predecessor-in-interest of respondents No.2 to 7 had entered into an agreement to sell (Exhibit

P-1) with Des Raj, present appellant/plaintiff on 10.12.1986 for sale of land measuring 11 bighas - 6 biswas @ Rs.5500/- per bigha. A sum of Rs.40,000/- was paid as earnest money and, on the same day, defendants had agreed to execute the sale deed by 20.6.1987 as per agreement (Exhibit P-1). It was stipulated in the agreement that in case the defendants committed any default with regard to performance of agreement to sell, the plaintiff would have the right to get the sale deed executed through Court. It was further pleaded that plaintiff was always ready and willing to get the sale deed executed in specific performance of the agreement, but the defendants did not execute the sale deed on or before 20.6.1987. It was pleaded that 20.6.1987 and 21.6.1987 were holidays, therefore, the plaintiff went to the office of Sub Registrar on 22.6.1987 along with balance sale consideration and registration expenses and got an affidavit attested to the effect that he was present before the Sub Registrar, but the defendants never came there to execute the sale deed. Lastly, it was pleaded that the plaintiff was always ready and willing to get the sale deed executed and he was having Rs.22150/-, the balance sale consideration, on the appointed date and even thereafter.

The suit was contested by the defendants. They denied having executed any agreement to sell in favour of the plaintiff and also refuted to have received the alleged amount of Rs.40,000/-. It was further pleaded that plaintiff is a Commission Agent. The defendants used to sell their agricultural produce at his shop. During the course of their transactions, the defendants

had been borrowing money from the plaintiff as and when required and the same used to be adjusted at the time of selling agricultural produce at plaintiff's shop. The defendants had business relations with the plaintiff, therefore, it may be possible that he had obtained their thumb impressions on some papers. The alleged agreement to sell is stated to be a forged and fabricated document. It was further argued that defendants are co-sharers in the land in dispute, therefore, they had no right to alienate specific khasra numbers out of the joint holding. The plaintiff never asked the defendants nor issued any notice for execution of sale deed. The plaintiffs have concocted a false story on the basis of forged document. On the pleadings of the parties, the following issues were framed:-

"1. Whether the defendants entered into agreement of sale dated 10.12.1986 with respect to the land in suit in favour of the plaintiff and received Rs.40,000/- as earnest money? OPP.

2. Whether the plaintiff has been ready and willing to perform his part of the contract? OPP.

3. Whether the defendants have committed breach of the agreement in question? OPP

4. Whether the agreement in question is forged and fabricated document and is result of fraud practiced upon the defendants? OPD.

5. Whether the plaintiff has no cause of action or locus standi to file the suit? OPD.

6. Relief."

The trial Court decided all the issues in favour of the plaintiff and decreed the suit. Defendant-Nachhattar Singh and successors-in-interest of Bachan Singh, who died during the pendency of the suit, challenged the judgment and decree passed by Sub Judge Ist Class, Malerkotla. The appeal filed by the defendants was accepted by the Ist Appellate Court vide order dated 8.12.1993. Aggrieved against the same, the appellant-plaintiff has filed the present regular second appeal.

Learned counsel for the appellant submitted that in pursuance of the judgment and decree of the Sub Judge Ist Class, Malerkotla, he has deposited the balance sale consideration within the stipulated period. Learned counsel further argued that the execution of agreement (Exhibit P-1) has been duly proved by its scribe Kamal Kishore and the attesting witness Ranjit Singh. PW1-Kamal Kishore stated that he had scribed the agreement on the asking of Bachan Singh and Nachhattar Singh and thereafter the agreement was read over to both of them and they had put their thumb-impressions admitting the contents thereof to be true and correct. Des Raj (plaintiff) as well as Ranjit Singh and Rahmatula, the attesting witnesses, had also put their signatures on the said agreement. Ranjit Singh while appearing as PW2 corroborated the statement of Kamal Kishore with regard

to execution of the agreement. He further stated that defendants had received Rs.40,000/- as earnest money. Learned counsel further argued that plaintiff had appeared before the Sub Registrar on the appointed date i.e. 22.6.1987 as 20th and 21st June, 1987 were holidays. He also got an affidavit attested in this respect on 22.6.1987 itself.

On the other hand, learned counsel for the respondents-defendants argued that the evidence on record is contrary to the pleadings of the plaintiff. Learned counsel pointed out that Ranjit Singh, the alleged attesting witness has simply stated that defendants had admitted the receipt of earnest money of Rs.40,000/-. However, the plaintiff has not mentioned this fact in his plaint. Rehmatula, another attesting witness appeared as DW1 and categorically stated that no deal for purchase of land in question was finalized nor Exhibit P-1 was scribed in his presence. He further stated that no consideration was ever passed in his presence. Though he admitted his signatures on Exhibit P-1, but stated that the paper on which his signatures were obtained was never read over to him. Even Bachan Singh and Nachhattar Singh did not affix their thumb-impression in his presence. Both Ranjit Singh as well as Rehmatula have not supported the version of the plaintiff that the amount of Rs.40,000/- was paid in their presence. Des Raj, plaintiff while appearing before the Court admitted that he was maintaining account books. However, he failed to produce the account books in order to show that a sum of Rs.40,000/- was ever paid by him as earnest money to

defendants Nachhattar Singh and Bachan Singh at the time of execution of alleged agreement.

I have heard learned counsel for the parties and perused the material on record.

It has come in evidence that plaintiff is a Commission Agent, therefore, he must be regularly maintaining the books of accounts for business purposes. It was incumbent on him to mention the payment of Rs.40,000/- having been made to Nachhattar Singh and Bachan Singh as earnest money in pursuance of agreement to sell. Moreover, Des Raj, plaintiff has not been able to prove as to from where he had arranged the sale consideration. While deposing before the court, he stated that he had the bank-balance of Rs.20000-25000/- at the time of execution of agreement and Rs.20,000/- he had arranged from his mother and brother. However, the plaintiff did not produce his bank pass book(s) to show that he had a sum of Rs.20000-25000/- in the bank and had withdrawn the same for the purpose of execution of alleged agreement to sell. Moreover, the plaintiff having stated that he was always ready and willing to perform his part of the agreement, was required to prove his assertions by leading some cogent and specific evidence. It may be pertinent to mention here that the plaintiff did not even get his mother and brother examined from whom he allegedly arranged Rs.20,000/-. He has also not produced any accounts books and/or bank passbook(s) to show that he had enough money for the specific performance of the agreement. It is not disputed that no

notice was ever served by the plaintiff calling upon the defendants to get the sale deed executed, though it is well established that he was required to do so asking the defendants to perform their part of the agreement and that plaintiff was himself ready and willing to perform his part.

As regards the affidavit, learned counsel for the respondent argued that affidavit is liable to be ignored as it does not indicate as to what facts are true to deponent's personal knowledge, information and belief, which was necessary for the deponent to disclose. If the statement of fact is based on some information, the source of information must be disclosed in the affidavit. Therefore, the affidavit does not comply with the provisions of law and it has no presumptive value for being relied on in any judicial proceedings. The appellant-plaintiff has failed to produce any evidence to prove that he was ready and willing to get the sale deed executed in his favour. He should have proved his readiness by placing cogent documents on record that he had the remaining sale consideration available with him at the time of execution of sale deed on or before the appointed date. The plaintiff has also not been able to prove that earnest money of Rs.40000/- was paid by him to the defendants, as neither any receipt or voucher nor any other cogent evidence with regard to payment of earnest money having been actually paid to the defendants, has been produced. The possibility, therefore, cannot be ruled out that the plaintiff might have obtained defendants' thumb-impressions on some blank papers and

used the same for preparing the alleged agreement to sell (Exhibit P-1), as the defendants were selling their agricultural produce to the plaintiff. Moreover, a perusal of Exhibit P-1 shows that there are two thumb-impressions obtained on the left margin of the first page besides one thumb-impression on the lower portion of first page and that too on the contents written on this page. On the second page of the agreement, four thumb-impressions have been obtained, two on the left margin and the remaining two at the bottom of the page. The second page of the agreement clearly shows that matter written on it has been adjusted in such a manner that it would finish just above the thumb-impressions obtained at the bottom, by leaving unnecessary blank space in between the lines. Thus, the agreement (Exhibit P-1) does not appear to be quite genuine and authentic one. Besides the above discussion, I am also of the view that no substantial question of law is involved in the present regular second appeal. The questions of law placed on record by learned counsel for the appellant appear to be more of questions of fact, rather than questions of law as they seem to be based on facts and not on law. Learned counsel failed to point out any illegality or infirmity in the impugned judgment & decree passed by the Ist Appellate Court. There is no error apparent on face of record in the impugned judgment & decree of the Court below.

Consequently, there is no merit in this appeal and the same is hereby dismissed.

20th September, 2006 **(NIRMAL YADAV)**

pc **JUDGE**

Note:- Whether to be referred to Reporters - YES/NO.